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GUILFORD PHARMACEUTICALS CO.
FOLEY & LARDNER
3000 K STREET, NW
WASHINGTON, DC 20007-5143

In re Application of :
Barbara S. Slusher et al :
Serial No.: 09/866,961 : PETITION DECISION
Filed: May 30, 2001 :
Attorney Docket No.: 264/239 :

This is in response to renewed the petition under 37 CFR 1.181, filed November 10, 2004, requesting withdrawal of the Final Office action.

A review of the file history is set forth in the previous petition decision which denied applicants' request to withdraw the Final Office action. In part, that decision was based on a response filed by applicants on October 17, 2003, following which the examiner mailed a Final Office action to applicants. Applicants continue to state that no reply was filed on October 17, 2003, even though the Office has a date stamped copy of a reply being filed on that date. The paper filed on that date, however, is a copy of an earlier filed response and likely not a full reply to the outstanding Office action. In consequence of the filing of the response on October 17, 2003, and in accordance with Office policy at that time, the file was forwarded to a contractor for scanning into an image file. This occurred on October 29, 2003, and the IFW (Image File Wrapper) became available to the examiner within a week of scanning. On December 16, 2003, applicants filed a complete reply to the Office action of September 16, 2003, by facsimile and this paper was scanned within two days and added to the IFW file. Thus both replies were available to the examiner for consideration at the time of preparation of the Final Office action, mailed January 29, 2004. The Office action, however, refers only to the reply filed October 17, 2003, and it is unclear whether the reply filed December 16, 2003, was considered by the examiner. In view of this uncertainty, it has been decided to withdraw the Finality of the Office action of January 16, 2004.

In explanation of the examiner's failure to receive copies of the facsimile transmitted copies of the December 16, 2003, reply, transmitted on February 26, 2004 and April 8, 2004, the Office centralized its facsimile receiving operations in the Fall of 2003, such that all facsimile transmitted papers would be received at a central location and be converted to IFW images for the examiner's use. Provision was made for examiners to directly receive draft copies of transmitted papers at their desk through a RightFax system. It is not clear whether applicants attempted to transmit the copies directly to the examiner through RightFax or used the central

facsimile number. In any event, the examiner failed to receive copies of the papers timely. However, the papers were already available in IFW and no such transmission was required.

The renewed petition is **GRANTED**. The application is restored to pending status with the mailing of this decision.

The file will be forwarded to the examiner for further action not inconsistent with this decision and will take into consideration all papers filed by applicants since September 16, 2003.

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number, 571-273-8300.

A handwritten signature in black ink, appearing to read "Bruce M. Kisliuk", with a stylized flourish at the end.

Bruce M. Kisliuk
Director, Technology Center 1600